

## **The SUPERB Advisory Committee Annual Report March 2003**

### **Purpose**

This report is submitted to the General Assembly and the Department of Health and Environmental Control (DHEC) in order to fulfill the requirements of Title 44, Chapter 2 of the 1976 South Carolina Code of Laws, as amended. Specifically, Section 44-2-150(G) of the State Underground Petroleum Environmental Response Bank (SUPERB) Act requires the SUPERB Advisory Committee to submit an annual report that addresses the financial status and viability of the SUPERB Account and the SUPERB Financial Responsibility Fund (SFRF), the number of sites successfully remediated, the number of sites remaining to be remediated, and any statutory or regulatory changes the Committee recommends. In addition, this report contains information regarding the current status of the underground storage tank (UST) population in South Carolina.

### **The SUPERB Accounts**

In 1988, federal regulations were enacted which required UST owners or operators to demonstrate financial responsibility for corrective action and third party liability at \$1,000,000 per occurrence. The South Carolina General Assembly created the SUPERB Account in 1988 to cover the corrective action portion of the federal financial responsibility requirements, and the SFRF was legislatively created in 1993 to cover third party damages. Since 1988, eligible UST owners and operators have looked to the SUPERB Account to pay for the cleanup of their petroleum leaks. UST leaks reported on and after July 1, 1993 are subject to a \$25,000 deductible. In 1996, the General Assembly extended the original coverage sunset date from 1998 to 2026. A ½ cent environmental impact fee imposed on each gallon of petroleum entering the state funds the Accounts. The Department of Revenue collects the fee under the authority of Section 12-28-2355 (Gasoline Taxes and Special Fuel Taxes). Annual revenues for the SUPERB Account approximate \$15 million.

In their December 2001 actuarial report, Milliman and Robertson, Inc. estimated that the deficit of the SUPERB Account as of December 31, 2001 was \$93 million and that the Account will have a deficit until the end of year 2010. The actuary also projected the Accounts will have a surplus of \$209,461,000 by 2026 under the current impact fee assumptions provided the relatively low leak rate from new and upgraded tank systems remains low.

SUPERB Account information as of December 31, 2002:

|  |                  |
|--|------------------|
| Total Revenue in Calendar Year 2002 <sup>1</sup> | \$ 15,672,813.52 |
| Balance brought forward to 2002                  | \$ 13,662,527.38 |
| Commitments as of December 31, 2002              | \$ 13,522,414.37 |
| Available for Commitment as of December 31, 2002 | \$ 297,517.40    |
| Total Expenditures in Calendar Year 2002         | \$ 15,515,409.13 |
| Cumulative Spent Since 1988 <sup>2</sup>         | \$158,877,243.34 |

<sup>1</sup>Receipts includes \$941,340.00 that was transferred to the General Fund.

<sup>2</sup>This amount includes monies previously transferred to create and replenish the SFRF.

### **SUPERB Financial Responsibility Fund**

As of December 31, 2002 the SFRF Balance was \$2,730,138.59. This balance reflects \$154,266.00 that was transferred to the General Fund. DHEC is currently aware of 12 third party claims or suits and actively participates in their resolution as allowed for in Section 44-2-40 of the SUPERB Act. A total of \$812,983.71 has been spent for claims, legal fees, and appraisal activities since the creation of this fund in 1993. A total of \$18,194.65 was expended on third party claims and associated legal expenses in 2002.

### **Financial Responsibility For the State Fund Deductible**

UST owners and operators must demonstrate financial responsibility for \$25,000 on a per occurrence basis as the SUPERB Accounts provide the remaining coverage. Allowable options include: self insurance, commercial insurance, insurance pool (risk retention group), guarantee, surety bond, letter of credit, trust fund, standby trust fund, and several local government options. The UST database reveals that sixty-eight percent (68%) of all UST facilities are covered by self insurance; 15% by letters of credit or surety bonds; 12% by commercial insurance; and 5% by guarantees, trust funds, and local government options.

### **Cleanup Program Progress**

DHEC has confirmed a total of 8,303 UST releases since 1988. Of these, 4,484, or 54%, have been closed. A total of 196 releases were closed in calendar year 2002; 132 without SUPERB funding and 64 with SUPERB funds. All but four were closed after assessment and/or monitoring data revealed no need to perform an extensive cleanup. Four were closed after cleanup actions were completed. Sites in active cleanup can take up to five years to complete.

At year's end, there were 3,819 open releases, of which 3,705 are eligible to receive SUPERB funds. Confirmed releases are ranked by DHEC according to the risk each poses. The priority system is outlined in the SUPERB Fund Access Regulations (R.61-98). Appendix 1 depicts the total number of SUPERB eligible releases that are currently being addressed, or need to be addressed, by their risk category as of December 31, 2002. Appendix 2 depicts this number by county. Appendix 3 depicts the number of cases funded and unfunded by the SUPERB Account by risk category as of December 31, 2002. DHEC reports that while most SUPERB funds are currently committed for the cleanup of high-risk releases, funding of lower cost assessment and monitoring activities at many lower ranking sites is also occurring in an effort to expeditiously close these cases. As of December 31, 2002, 334 releases were in active cleanup, 1,078 releases were undergoing assessment, and 413 releases were being monitored with SUPERB monies or under the \$25,000 SUPERB deductible. DHEC directs owners and operators who are responsible for the first \$25,000 (i.e., releases reported after June 30, 1993), or who are not qualified to receive SUPERB monies, to proceed with assessment or cleanup efforts without delay. Funding continues for those cases where the UST owner and operator have

met their \$25,000 deductible only when the risk posed by the release remains high or if it is likely that a nominal expenditure will allow the case to be closed.

### **Underground Storage Tank Information**

Since 1986, there have been 43,389 USTs registered with DHEC. Of those, 30,857 have been removed from the ground or properly closed in place. As of December 31, 2002, there were 12,532 operating USTs at 4,303 locations, an average of 2.9 tanks per location. During 2002, 258 USTs were permanently closed while 95 new USTs were installed, resulting in a net loss of 163 operating tanks.

Most active UST systems are required to have corrosion, spill, and overfill protection. Unfortunately, DHEC inspections continue to show that nearly one fourth of the tanks are not properly operated or monitored. DHEC attributes this high incidence of noncompliance to equipment vulnerability and personnel turnover in the industry, which results in a lack of trained operators at UST sites. The Committee believes that continued inspections and outreach efforts will improve overall operational compliance. The US Environmental Protection Agency reports that operational compliance is a national concern and is working with the state agencies to improve the situation.

### **Legislative Recommendations**

In 2002 by a vote of 10-3, the SUPERB Advisory Committee recommended that DHEC submit amendments to the SUPERB Act for legislative approval that will allow the agency to create a separate and protected account for the purpose of accumulating sufficient initial capital to start a nonprofit mutual assurance fund for South Carolina UST owners and operators. As approved, the amendments will allow DHEC to transfer up to \$10 million over the next three years from the SUPERB Account into this new account. South Carolina UST owners, upon demonstrating sufficient interest by filing an application with the South Carolina Department of Insurance to create a mutual assurance fund, may use this money to satisfy the initial capitalization requirements under state law to create the mutual assurance fund. Once approved by the Department of Insurance, the mutual assurance fund would serve as another option for UST owners to use in meeting their state and federal financial responsibility requirements. Once the mutual fund is established, the majority of the Committee believes that financial assurance currently provided by the SUPERB Accounts for UST owners and operators for future releases could be discontinued. The Committee recommends that the funds in the protected account be returned to the SUPERB Account at the end of the third year if tank owners have not filed an application with the Department of Insurance. The Committee based its recommendation upon review of the mutual assurance fund established in Iowa for their UST owners and operators and the 2001 Milliman and Robertson, Inc. report where an estimate of the initial capital and approximate premiums for such a fund were projected.

The SUPERB Advisory Committee also recommends that DHEC explore bonding to accelerate the cleanup of known releases that are eligible for funding from the SUPERB Account. The Committee

remains concerned that many high priority releases needing corrective action continue to be unfunded and that a bonding initiative would provide additional funds to allow DHEC to intensify the cleanup effort. The Committee believes that it will be feasible to use part of the future revenue stream of the SUPERB Account to repay the bonds.

Lastly, the SUPERB Advisory Committee would like to acknowledge that it has reviewed the need, and by a majority vote, supports any DHEC effort to raise the annual registration fee from \$100 to \$140 per tank per year. DHEC uses the registration fees for program administration. In light of the past revenue generated by the historically larger tank population, the agency was, until recently, successful in relying solely on these fees and federal funding for administrative expenses. However, the corrective action workload resulting from the former substandard tank population has not diminished, and the regulatory services the agency provides for the active UST population, such as permitting, financial responsibility tracking, inspections, outreach, and enforcement efforts, are ongoing tasks and require sufficient funding. DHEC could reduce its reliance on the SUPERB Account for administrative purposes if the increase was enacted.